

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

KEVIN D. MILLER,)
)
)
Plaintiff,)
v.)
)
)
ACCOUNT MANAGEMENT SERVICES,)
d/b/a Asset Partners of Western New York,)
LLC;)
ACCOUNT MANAGEMENT SERVICES OF)
NORTH AMERICA, LLC,)
f/k/a Account Management Services, LLC;)
UNIFUND CORPORATION;)
MERCHANT'S CREDIT GUIDE COMPANY;)
FINANCIAL RECOVERY SERVICES, INC.;)
LVNV FUNDING, LLC;)
RESURGENT CAPITAL SERVICES, LP;)
GENESIS FINANCIAL SOLUTIONS, INC.;)
FIRST NATIONAL COLLECTION)
BUREAU, INC.,)
)
Defendants.)

CAUSE NO: 1:07-CV-231

OPINION AND ORDER

This matter is before the Court on *pro se* Plaintiff Kevin Miller's "Motion for an Order Directing Account Management Services, LLC to Obtain Counsel Instanter," filed September 2, 2008. (Docket # 119.) Miller is suing several entities alleging invasion of privacy and violations of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (Docket ## 1, 83), but Account Management Services, doing business as Asset Partners of Western New York, LLC ("Asset Partners"), is the only party that has not appeared.

On October 11, 2007, Miller sought an entry of default (Docket # 22) and default judgment (Docket # 24) against Asset Partners, which was denied on October 17, 2007, because

it was premature. (Docket # 25.) Asset Partners was subsequently served on January 7, 2008 (Docket ## 57, 58), and has yet to file an answer. Later, on March 19, 2008, Miller sought another entry of default and default judgment (Docket ## 66-67, 71), but this too was denied because the Court determined that although the defendant had not filed an answer it had otherwise been defending the case.¹ (July 22, 2008, Or. 3.)

Miller subsequently filed an amended complaint on June 24, 2008, again naming Asset Partners as a defendant.² (Docket # 83.) At this juncture, Asset Partners has not appeared by counsel. Because an LLC must be represented by counsel, *Kipp v. Royal & Sun Alliance Personal Ins. Co.*, 209 F. Supp. 2d 962, 963 (E.D. Wis. 2002) (“[W]hether the LLC [is] characterized as a corporation, a partnership, or a hybrid, it may only appear in court through counsel.”), the relief Miller seeks will be granted.

Therefore, Miller’s motion seeking an Order directing Asset Partners to obtain counsel (Docket # 119) is GRANTED. Asset Partners shall file an answer signed by counsel within twenty (20) days of the date below. Failure to comply with this Order may result in the entry of a default and entry of a default judgment.

The clerk is directed to send a copy of this Opinion and Order to the address where service was purportedly obtained on Asset Partners: Account Management Services, doing

¹Judge Lozano understandably drew this conclusion from the fact that Account Management Services, LLC, a New York limited liability company, had filed a motion to dismiss for failure to state a claim, or in the alternative, for summary judgment. (July 22, 2008, Or. 3.) However, as revealed at a hearing held on August 19, 2008, that motion to dismiss was filed by Attorney Holly Brady on behalf of a different entity (*see* Docket # 59), *not* Asset Partners. In fact, Ms. Brady clarified that she does not represent Asset Partners, but rather Account Management Services, LLC, a New York limited liability company, and Account Management Services of North America, LLC, which are separate entities. (*See* Docket # 109.) Thus, contrary to the July 22, 2008, Order, Asset Partners has not appeared or otherwise defended against Miller’s cause of action.

²Because the amended complaint advanced no new or additional claims for relief against Asset Partners, Miller was not required to issue a new summons to them under Federal Rule of Civil Procedure 5(a)(2).

business as Asset Partners of Western New York, LLC, 400 Linden Oaks Drive, Rochester, NY 14625.

SO ORDERED on September 25, 2008.

S/ROGER B. COSBEY
Roger B. Cosbey
United States Magistrate Judge